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August 19, 2014

ACCEPTED/FILED

AUG 19 2014

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals, TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

Re: RM-11727

Dear Ms. Dortch:

On behalf of Grant County Broadcasters, Incorporated, there are transmitted herewith an original and one (1) copy of its Comments with respect to the above-referenced petition for rulemaking.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,



Robert L. Olender
Counsel for
Grant County Broadcasters, Incorporated

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ORIGINAL

**Before the
Federal Communications Commission
Washington, DC 20554**

ACCEPTED/FILED

AUG 19 2014

In the Matter of

Amendment of Sections 73.207, 73.210)
73.211, 73.215 and 73.3573 of the)
Commission's Rules Related to Minimum) RM-11727
Distance Separation Between Stations,)
Station Classes, Power and Antenna Height)
Requirements, Contour Protection for Short)
Spaced FM Assignments and Processing)
FM Broadcast Station Applications)

Federal Communications Commission
Office of the Secretary

To: Secretary, FCC
Attn: Media Bureau

COMMENTS OF GRANT COUNTY BROADCASTERS, INCORPORATED

Grant County Broadcasters, Incorporated, licensee of zone II class A FM station WNKR (FCC Facility ID #24817) at Williamstown, Kentucky hereby submits our comments on RM- 11727. This RM is a proposal by SSR Communications (the petitioner) to create a new class of FM stations to be called class C4.

The petitioner, in the actual RM, calls for the modification of sections 73.207, 73.210, 73.211, 73.215 and 73.3573. All of these requests concern rule modifications pertaining only to the spacing and other matters relevant to and needed for the creation of the proposed full-power C4 station class. For the purposes of these comments we will refer to this as the "original proposal". The petitioner circulated this proposal among existing full power station owners and operators and gathered significant support for this original proposal.

Then, in their comments on their own proposal, the petitioner modified, enhanced and greatly expanded their original proposal to include an additional request that the Commission allow significant and harmful new interference to all full-power FM stations by secondary FM translator services. This is in the form of an addition to the original proposal that requests modification of section 74.1203(a) of the rules to eliminate any protection for full power FM stations from FM translator interference beyond the primary contour of the full power station. For the purpose of these comments we will refer to this as the "modified proposal".

We are opposed to the modified proposal, including the creation of the C4 class. It should be obvious to anyone studying the original proposal that a consequence of creating the C4 class will be a reduction in zone II of FM translator and LPFM opportunities due to the additional protected coverage created for stations in the new class. We would point out that- for any station upgrading- the additional coverage provided by the upgrade will be relatively modest. As such, we believe the reduction in translator and LPFM opportunities would also be relatively modest, but there *would* be a reduction. Realizing this and that it might be the grounds used by the Commission to decline the C4 request, the petitioner now seeks, as their total presentation, the items contained in the original proposal plus additional, far reaching additional changes contained in the modified proposal.

We object to the modified proposal on several valid grounds. First, we see it as a back-door attempt to garner support for the original proposal without informing the "supporters" of the C4 class idea of all of the consequences the petitioner actually has in mind for modifying the coverage of their stations. The list of "supporters" garnered by the petitioner is actually a list of supporters *for the original proposal alone*, yet the list is attached to the modified proposal, creating the illusion and inference that the modified proposal is supported by these broadcasters. We are certain that gathering this support was fairly easy. After all, who wouldn't favor a power increase, however modest it may be, for their station(s)? We are equally certain that many of them would withdraw their support if they were aware (as we are) that all full power FM stations will be at risk of losing significant and essential portions of their existing coverage right up to the edge of their primary contours, and that this lost coverage is sure *to exceed any additional coverage they gain through the creation of class C4*. In creating the modified proposal, the petitioner actually removes so much protection from full power stations that the proposal assures a significant and extremely harmful reduction in coverage for all classes of full power stations in all zones.

We also note the extreme irony that the stations to suffer the most from the additional translator interference they would have to accept are the class A FM stations that the original proposal was supposedly designed to "help". This class of station has the smallest primary contour of any full power class. Because of this, class A stations are also the most likely to have significant audiences beyond their primary contours- audiences that they can protect today but that would be lost and unrecoverable under the modified proposal. In the case of our class A station this would mean the irrecoverable loss of half of our audience, forty percent of our market in terms of trading area and well over half of our revenue. It would result in our facility going from being modestly profitable to operating at a substantial loss. It would put us out of business or require us to so severely curtail the investments we currently make in programming and personnel that the station would have nothing in common with our current service. Under the revised proposal, this problem would occur at any zone II class A station not eligible to upgrade to C4 status and at all class A stations *outside of zone II*. Any station upgrading to C4 will eventually find itself with a *smaller coverage area than they had as a class A station because of the translator interference they would be required to accept*. Literally thousands of currently successful stations that provide essential services in their entire

coverage areas every day will find their business models wrecked and their ability to continue put in jeopardy. We do not believe that modifying the rules in a manner that denies service and eliminates the economic viability of those stations providing said service is in the public interest.

We urge every broadcaster taking the time to read our comments to get out the map of their station's coverage. Study your primary contour versus what you cover now and ask yourself what the effect on your station will be if the primary contour was all of the coverage you were permitted to have. If you are a group owner, look at all of your stations and ask yourself how many would fail under those circumstances. The modified proposal is not some innocuous idea to *increase* the coverage of a few stations in one zone. Rather, it is a proposal to radically *reduce* the coverage of every full power FM station in every class and in every zone that is masquerading in a nefarious, back door manner under the guise of "aid" for class A stations.

Adoption of the modified proposal would also cause major problems within the EAS system as stations become cut off from their monitoring assignments due to the installation of new translators. As a local primary station in our area, our station is monitored by multiple others, none of which are within our primary contour and one of which is nearly 50 miles away. That station is assigned to monitor us because we are the only Kentucky facility they can receive (and it takes quite a bit of effort to get us). This station is the most listened to facility in our metro and it is essential that they receive Kentucky EAS information. We really do not know of an alternative for the EAS service we provide in our area if protection for our signal was reduced to "primary" only. There are no other FM choices aside from us and the other primary, which is quite directional. AM in our portion of the metro is not adequate because no Northern Kentucky AM license has enough power at night to replace us. This scenario is likely to repeat itself at many locations across the country. Being unmanned 100% of the time and often retransmitting a distant signal, the translators themselves are no substitute for full power stations for EAS purposes. In fact, when a translator is installed up to a full power station's existing primary contour it will not replace the full power station in a significant portion of the coverage area lost by the full power station. Instead the full power station and the new translator will cause so much interference to each other that no station is receivable with a useable signal in the secondary coverage area formerly served by the full power station. In addition to reducing EAS options to listeners in those areas, the net effect is a complete loss of any service on that channel, where there once was clear, useable reception.

As justification for the translator rule changes in the modified proposal, the petitioner makes several erroneous assertions. They state that the current rules "allowing full power stations to claim interference beyond their primary contours is enjoying a right beyond the terms, conditions and periods of its license and is clearly contrary to section 301 of the Communications Act of 1934". Section 301 establishes the duty and right of the Commission to license communications but we cannot see that it, in any way, establishes what the coverage boundaries of those licenses should be.

The standard for FM primary facility spacing has, for decades, been the mileage separation tables contained in section 73.207 of the Commission's rules- the very tables the petitioner seeks to modify to establish the C4 class. These tables establish the generally available coverage for each authorized facility. And it is the separation requirements in these tables that have created the existing primary *and secondary* coverage for every primary, full power station. There are exceptions- grandfathered stations, short spacing in certain circumstances, etc. but the basic benchmark for separation among primary stations has been and remains these tables. We assert strongly that the values in these tables are what created the right to every existing full power primary station's so-called secondary coverage and that, if there is no right to this coverage as the petitioner suggests, then these tables would have been structured to not establish any secondary coverage in the first place. The petitioner grudgingly concedes that "listening beyond the primary contour takes place" and that the Commission "has upheld this *notion many times in the past*" but then suggests that the Commission abandon this time-tested *principle* that broadcasters have long relied on, based on no more than the petitioner's whim and a citation that has nothing to do with the issue at hand. The Commission would not have upheld this "notion" if there was no intention of the Commission to allow, create and preserve secondary coverage

The modified proposal is what is contrary to the spirit and letter of the law, not the existence of coverage beyond the primary contour of existing, full powered stations. In the original proposal the petitioner states that the creation of new power classes for full power stations is not unprecedented, a true statement. However, the modified proposal seeks to change the very definition of secondary services, which are historically defined as services that must accept interference from primary services, but cannot cause interference to those services and must cease operations if interference is caused. This *is* unprecedented. For the first time, the petitioner seeks to confer de facto primary status on secondary FM translators. For the first time, they would be allowed to cause significant and harmful interference to existing, primary, full power stations and the primary station would be required to accept this interference despite having active, regular users of their station in the interfered with area. These listeners would be permanently cut off from the stations they regularly use and neither the listeners nor the stations involved would have any recourse to restore their service. This is contrary to the legal definition of a "secondary" service and is contrary to the rules establishing and governing secondary services. Indeed, under the revised proposal, full power stations would be subjected to far more interference from secondary FM translators than would be permitted among primary, full power FM stations. That, we respectfully submit, is a concept that borders on the absurd and it is not in the public interest. Certainly it is contrary, in every way, to the intent of the writers of the current rules governing secondary services.

The primary basis the petitioner uses for their proposed extreme liberalization of the translator rules in section 74.1203(a) is the Commission's AM Revitalization efforts. In our comments on those efforts, we pointed out that AM Revitalization should be more than the wholesale migration of AM radio to FM radio. We said that we feared that these efforts could harm existing FM radio by overpopulating the FM band and that AM enhancements that degrade FM radio are not a step forward because they weaken FM

service and FM viability. Therefore, they are not in the public interest. The modified proposal is an example of exactly what we were referring to in those comments. We continue to feel that the most effective way to convey FM facilities of any type of class to AM broadcasters is to reassign VHF TV channels 5 and 6 (which have proved unsuitable for digital transmission) to the FM band. This would create ample room for everything the Commission wants to do for AM radio, without these repeated attempts to put 25lbs. of FM radio into a 10lb. bag. We remain in favor of the use of FM translators by AM stations where they can be successfully established under the existing translator rules.

The petitioner contends, in the modified proposal, that it would create the analog distribution of more "diverse HD sub-channel programming unavailable to analog listeners". This practice has depressed consumer demand for HD receivers by rendering them unnecessary for HD sub channel reception. Most of the growth in HD receivers has come from their installation as standard (cannot be deleted) equipment in new cars and not from any desire by consumers for HD radios related to programming. These analog retransmissions of HD sub channels are usually similar to analog formats and are specifically designed to compete in the analog marketplace, rather than being the "diverse" field of format riches the petitioner describes. Indeed, a strong argument can be made that analog rebroadcast of HD sub-channels is contributing to a *lack* of diversity on those channels since program choices are being made based on the effect of the analog rebroadcast on analog competitors rather than establishing a new HD "band" with entirely new ideas and formats.

In the modified proposal, the petitioner contends that translator operators are victims who are routinely subjected to "dubious claims of interference from full power stations". We have had a translator interfere with us. Therefore, we are familiar with the documentation the Commission requires. Construction is authorized based only on the primary contours of co-channel and adjacent channel stations. The computer programs used for these new applications are required to make no attempt whatsoever to determine if there is any regular use by listeners beyond the primary contours of existing stations the applicant must consider. In fact, the issuing of a construction permits cannot be stopped on this basis even if it is obvious that there will be interference. Once the translator or LPFM facility is constructed and operating the burden of proof shifts to the full power station. The full power station must gather extensive personal information on every interference complaint. The name, address, phone number and specific nature of the interference received must be gathered and that information submitted to the Commission for every affected listener that the full power station is aware of. This is in stark contrast to the petitioner's unsupported contention of "dubious" interference claims. Indeed, we fail to see how a claim of a dubious nature could be successfully prosecuted with documentation of the interference in this detail being required. It is also a fact that complaints at a considerable distance from the interfered with station's primary contour are not necessarily "dubious". A station with a unique, unduplicated format that there is demand for is likely to have listeners at a considerable distance. A station with a format that is not unique or that consists largely of network programming available on many other facilities is not. Absent interference, modern FM receivers are capable of creating listenable audio from very small amounts of signal. The modified proposal would disproportionately

penalize stations with listeners at a distance due to the unique and diverse nature of the programs they transmit. We believe the petitioner's contention that translator operators need relief from "dubious interference claims" to be unsupported in the modified proposal and to be without significant merit.

The petitioner asserts that adoption of the modified proposal would bring FM Translator rules more in line with LPFM rules. We fail to see how. The procedure for interference resolution by full power stations with LPFM stations is the same time tested procedure as with FM translators. It preserves the definition of secondary services and has worked very well in allowing these services where they do not cause interference and preventing them where they do. Adoption of the revised proposal would actually give translator services an advantage over LPFM services, which would still be subject to the existing rules governing interference by them. Furthermore, translators are more likely to create interference problems since there are no HAAT restrictions on them, versus significant HAAT restrictions on LPFM's. As a consequence, there are translators in our market with over 40 miles of coverage from their tower because they are very tall- 250 watts goes a long way 800 feet off the ground. These installations are capable of interference over great distances. The current language in 74.1203(a) is the only tool available to full power stations to eliminate interference from these secondary services. We feel that the modified proposal significantly enhances existing benefits translators enjoy over LPFM stations while rendering full power stations impotent to defend their markets and their listeners from encroachment by translators. It must be rejected. The stability and viability of full power FM radio is at stake.

The petitioner claims in both the original and the modified proposal that the Commission should adopt the proposals because the position of minority owned broadcasters would be enhanced. In support of this they have submitted a table showing minority owned stations they have identified as being eligible to become "C4" stations under their proposals. We respectfully contend that there is no guarantee that this proposal would benefit minority ownership at all. The stations identified by the petitioner can be sold to non-minority interests at any time. In fact, the petitioner identifies Radio One as one of the minority owners that benefits. This company used to own significant clusters in Dayton, Ohio and Louisville, Kentucky, which they sold to non-minority controlled companies. As such, the racial diversity of ownership in both of those markets was reduced considerably. Because there is absolutely no guarantee that a minority owned station today will remain minority owned in the future, there is no convincing evidence that benefits or contributions to minority owned stations under any proposal- including the petitioner's- that is based on engineering criteria will be permanent or significant over time. Therefore, we respectfully ask that the Commission dismiss the petitioner's contention that this benefit is substantial or permanent enough in both the original proposal and the revised proposal to be a factor in the Commission's decision. Finally, we note that Radio One, cited as an example of a minority owner that will benefit from the proposals, also owns two class A facilities in the Cincinnati metro that are highly rated and listened to over a wide area. Under the revised proposal, these facilities, like ours, would be subject to having their current coverage significantly curtailed. So, at least one minority owned

company touted as being aided in the original proposal actually turns out to lose coverage under the revised proposal.

The Commission's public notice regarding RM-11727 soliciting comments, describes the scope of RM-11727 as a request to revise sections 73.207, 73.211, 73.215 and 73.3573. It does not include any proposal to revise 74.1203(a). We contend that the petitioner's back door attempt to include revision to 74.1203(a) by asking that it be revised and greatly expanded in their comments is incorrect as to form. It would deny readers of RM-11727 a full and complete understanding of the petitioner's full proposal and intent because they would have to also read the comments to get this. It significantly shortens the period all interested parties have to comment on the entire, modified proposal of the petitioner. Obviously, the full modified proposal should have its own RM number and should be presented as one unified and coherent document and concept. Furthermore, we feel the petitioner should remove the list of "supporters" from the modified proposal since their support was based only on the original proposal and therefore, do not indicate support for the radically different modified proposal. Certainly, the Commission should give no weight to the list, given these circumstances.

If the Commission decides not to require that the petitioner resubmit the entire modified proposal for consideration and publication under a new RM number, we respectfully request that the Commission only consider the items contained in the original proposal and specifically exclude the content in the petitioner's comments that create the modified proposal. We contend that, under those circumstances, the Commission should only consider if public benefit from creation of the C4 class is greater or lesser than the loss of translator and LPFM opportunities that would result under the adoption of the original proposal and the current language of section 74.1203(a). We feel strongly that no modification to 74.1203(a) should be considered because the comments of the petitioner are an improper attempt to greatly modify the scope of the original proposal without submitting the entire concept to the proper scrutiny that fairness demands and the law requires.


Respectfully submitted,

GRANT COUNTY BROADCASTERS, INCORPORATED

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